

## Cover article: "New Measures for Speeding up the Settlement of Lawsuits"

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A series of measures seeking to speed up the procedure for the settlement of civil or criminal lawsuits were introduced by recently published Law no. 202/2010, which will come into force on November 26, 2010. This month's article provides you with a review of the main amendments brought to the civil procedure norms, with implications upon an extremely large range of civil and commercial litigation cases.

### Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

- Corporate
- Competition
- Public Procurement
- Real Estate

## + VF News

- Voicu & Filipescu has recently assisted Interprime Properties in closing of the transaction for the EUR 35 million acquisition from Timpuri Noi of a landplot of 5 hectares.
- Our long time global partner Squire, Sanders & Dempsey LLP and Hammonds LLP approved an agreement to combine, effective as of January 1, 2011, creating a new top-tier global legal practice to provide comprehensive legal advice to clients worldwide.

## **NEW MEASURES FOR SPEEDING UP THE SETTLEMENT OF LAWSUITS**

A series of measures seeking to speed up the procedure for the settlement of civil or criminal lawsuits representing the object of published Law no. 202/2010 (the "Law"), which is to come into force on November 26, 2010.

In consideration of the contemplated coming into force, on July 2011, of the new Civil and Penal Codes, this legislative action answers the need to outline certain guidelines with respect to the civil and penal procedure norms.

This article presents a review of the main amendments brought to the civil procedure norms, with implications upon an extremely large range of civil and commercial litigation cases.

### **MAIN AMENDMENTS BROUGHT TO THE CIVIL PROCEDURE NORMS**

#### **Amendments with respect to jurisdiction**

A new element brought by the Law refers to the courts' competence to settle, in lower courts and higher courts, lawsuits and claims regarding receivables the object of which is the payment of a cash amount of up to, and including, RON 2,000.

One may, therefore, note a tendency to decrease the workload of the courts of law, as in lower range litigation cases one even eliminated the second appeal remedy at law, which, according to the old version of the civil procedure Code, was the only remedy at law in such litigation cases.

#### **New provisions regarding summons and the service of process**

In an attempt to identify solutions in the sense of speeding up the litigation settlement procedure, new regulations have been implemented with respect to the delivery of summons and of various claims and written instruments submitted by the parties:

- after the court is notified, the claims, defense statements or other deeds may be communicated directly between attorneys/legal counsel, provided that the copy submitted to the court of law contains a certification of its communication to the other party.
- Such measure sought to reduce the number of hearings awarded in a case for the review of the claims or the written instruments submitted by one of the parties.
- apart from the classical system (which uses postal services), the process shall also be served by telephone, fax, electronic mail – means of information that allow the confirmation of receipt.

#### **Emphasizing the role of mediation – means of reconciliation of the parties**

A method of amicable settlement of the disputes, with the support of a specialized third party (the

mediator), is mediation, a procedure which applies with respect to a large range of conflicts occurred in civil, commercial, family, penal matters, conflicts in the consumer protection field, etc.

The parties involved in a dispute may resort to mediation, on a voluntary basis, even in the event that a litigation case has already been brought before the competent courts. As of March 3, 2010, the amendments brought to Law no. 192/2006 implemented the obligation of the judicial and arbitration bodies, but also of other authorities with jurisdictional duties, both to inform the parties with respect to the possibility and the advantages of using the mediation procedure, and to advise the same to resort to said procedure for the settlement of their disputes, thus ensuring a correct information of the parties with respect to the possibilities of amicable settlement of disputes.

This guideline has also been followed with respect to the recent amendment of the civil procedure Code, the judges having the possibility to invite the parties to participate in a free meeting of information with respect to the advantages of said procedure.

The role of mediation as a mandatory prior procedure is much better delineated in the amended version of the provisions of art. 7201 of the civil procedure Code: prior to commencing a commercial litigation case, the interested party is obligated to carry out one of the prior procedures: either direct conciliation or mediation.

An advantage of mediation, as a new procedure for the amicable settlement of disputes, is the fact that the commencement of such procedure represents grounds for suspending the lapse of the statute of limitations period, which suspension, however, operated over a limited period of time – 3 months following the commencement of the procedure.

However, the use of such solution for the amicable settlement of a dispute may prove redeeming, especially in the case of disputes over receivables that are at a time close to the expiry of the statute of limitations period.

### **Setting shorter terms for the settlement of litigation**

The central element, the driving force of the legislative step in discussion, is the need to set as short a term as possible for litigation settlement procedure.

Apart from the attempts to relieving the Courts of some their responsibilities (by means of eliminating remedies at law, in the case of lower range litigation cases, by providing the parties with out-of-courts dispute settlement methods), the new regulations seek to identify methods to shorten the duration of settlement of already commenced trials.

To that effect, the new measures refer to:

- the possibility that the court, in consideration of the specific status of the case file, should set

*short terms, even at short notice* (to that effect, the courts have the possibility to decide upon informing the parties with respect to the terms by telephone, cable, fax, electronic mail);

- in the case of commercial litigation cases, in the event that the summoning procedure is complete, judgment may continue (in a public meeting / in Chambers) over the following day or at short successive hearing dates;
- the changing of the hearing term is to be decided upon by the Court, on solid grounds, in Chambers, *without summoning the parties*.

### **Changes with respect to the scope of the judicial technical investigation**

Unlike the current procedure, according to which the communication of the objectives of the specialized technical investigation, the setting of the expert fee, were discussed in a public meeting, and even at several hearing terms, the new regulation sets out a new procedure, carried out in Chambers.

The court shall convene the parties in Chambers, on which occasion it shall discuss with the expert (i) the estimated cost of the works and (ii) the estimated period necessary for drawing up the investigation report (following which the expert's and the parties' position as to said matters would be recorded in a court resolution).

Depending upon the expert's and the parties' position, the court sets out the term for filing the investigation report and the conditions for the payment of the expenses required in view of performing the investigation.

It is thus attempted to avoid the situations in which litigation cases having a major stake await their settlement for several years, either due to the fact that it was impossible to contact one or several technical experts, or due to the successive hearing terms awarded for the completion of the investigation report.

### **New enforcement regulations**

In this field, the legislative step sought, on the one hand, to simplify the procedure, but also to set clear terms for the various stages of the same.

More specifically, a first step is the extension of the court executors' competence, enforcements being performed by the court executors in the district of the court of appeals where the enforcement is to be performed / in the district of which the goods are located (unlike the current procedure, in which the court executors' competence was established at court level).

Also, clear terms have been established both for requesting the consent with respect to the enforcement (the court executor is obligated to request such consent within 5 days following the registration of the request by the interested party), and for the actual procedure of consent to the

enforcement by the court (such measure to be decided upon within a maximum of 7 days following the recording of the registration application).

Last, but not least, a novelty element is the establishment, in the procedural norm, of certain grounds for the court's dismissal of the request for consent to the enforcement.

More specifically, the court may dismiss such request in the following cases:

- (i) the enforcement request is in the competence of an enforcement body other than the one that was notified in this respect;
- (ii) the title has not been rendered enforceable (this requirement is also necessary for the commencement of the enforcement procedure);
- (iii) the receivable is not uncontested, liquid and enforceable against the company;
- (iv) the title contains provisions that cannot be carried out by means of the enforcement;
- (v) there are other impediments provided for under the law.

It is, however, noteworthy that the newly published is far from offering a real solution with respect to the enforcement procedure, as the new provisions of art. 373<sup>1</sup> of the civil procedure Code are susceptible of numerous interpretations from the perspective of:

- (vi) the prerogative of the court, notified with a request for consent to the enforcement, to review the uncontested, liquid and enforceable nature of the receivable (especially if such elements have already been reviewed by the court issuing the enforceable title), but also from the perspective of
- (vii) the potential arbitrary interpretations of the phrase "*other impediments provided for under the law*", which create the very premises for additions to the text of the law by certain courts that over-zealously apply the procedural norm.

## **CONCLUSIONS**

The new normative act creates the premises for speeding up the litigation settlement procedure, but the new provisions solely represent a first step, an outline of what the reform of the jurisdictional deed is intended to represent.

## corporate - legislative retrospective

**Government Emergency Ordinance no. 90/2010** for the amendment and supplementing of company Law no. 31/1990, published in Official Gazette no. 674 of October 4, 2010 ("GEO 90/2010").

An important amendment brought to Law no. 31/1990 consists in waiving the suspensive effect of the opposition filed against a merger or split-off project. Thus, according to article 243 of Law no. 31/1990, as amended by GEO no. 90/2010, the filing of an opposition does not result in the suspension of the merger or the split-off, nor does it prevent the completion of the merger or the split-off.

Furthermore, as of January 1, 2011, the annual financial statements, the report regarding the same, the censors' report or the financial auditors' report, shall solely be submitted to the territorial units of the Ministry of Public Finances.

## competition - legislative retrospective

**Competition Council Order no. 519/2010** for the implementing of the Regulation regarding the ascertaining of summary offences and the applying of sanctions by the Competition Council was published in Official Gazette no. 705 of October 22, 2010 (the "Order").

The Regulation's purpose is to set the regime for the ascertaining of summary offences and the applying of sanctions provided for under competition Law no. 21/1996, with its subsequent amendments and additions, as well as of those provided for under Government Emergency Ordinance no. 117/2006 on the national procedures in the state aid field.

## public procurement - legislative retrospective

**Order no. 314/2010 of the National Authority for the Regulation and Monitoring of Public procurement** on the implementing of the certificate of participation in independent offer tenders was published in official Gazette no. 701 of October 20, 2010 (the "Order"). According to article 1 of the Order, each offeror or candidate to any form of tender shall submit an affidavit (a model of which is attached to the Order) certifying the fact that the participation in said procedure is in compliance with the competition rules.

## real estate - legislative retrospective

Emergency Ordinance no. 30/2010 for the amendment of Emergency Ordinance no. 60/2009 regarding the First Home program was approved by Law no. 187.

The main amendments brought by Law 187 are:

- (a) the extension of the category of persons who may benefit from the First Home program – from persons who, up to the credit application date, had not owned any home, to persons who, beginning with year 2000, have not owned any home;
- (b) eliminating the condition that had been imposed by Emergency Ordinance no. 30/2010, with respect to the joint ventures that may benefit from the program, in the sense of being established by at least 7 beneficiaries;
- (c) the extension of the period of validity of the 2<sup>nd</sup> ranking mortgage right to be established in favor of the financing bank, up to the beneficiaries' performance of all of their obligations arising from the credit agreement.

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